

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

AND

THE HONOURABLE MRS. JUSTICE CHITRA VENKATARAMAN

WRIT PETITION Nos.3729 & 3730 OF 2004

The Assistant Commissioner (CT),
Zone IX, PAPJM Building,
Third Floor, Greams Road,
Chennai 6.

.. Petitioner in both WPs

Vs.

1. M.Raman

6/780, 143rd Street,

Muthamizh Nagar, Chennai 118.. Respondent No.1 in
WP.No.3729/2004

2. V.Sekar

.. Respondent No.1 in
WP.No.3730/2004

3. The Registrar,

Tamil Nadu Administrative Tribunal,
Chennai 104.

.. Respondent No.2 in both WPs

Petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the second respondent, the Hon'ble Tamil Nadu Administrative Tribunal, Chennai in O.A.No.1657/1994 & 1658/1994 dated 3.4.2002 and subsequently quash the same.

For Petitioner : Mr.S. Gomathy Nayagam
in both WPs Special Govt. Pleader (Writ)

For Respondent-1 : Mr.C. Kanagaraj
in both WPs

COMMON ORDER

(The order of the Court was made by P.K. MISRA, J)

W.P.Nos.3729 and 3730 of 2004 were heard together. Both the writ petitions are directed against the common order passed by the Tamil Nadu Administrative Tribunal in O.A.Nos.1657 and 1658 of 1994. O.A.No.1657 of 1994 was filed by M. Raman and O.A.No.1658 of 1994 was filed by V.Sekar against the separate orders passed by the disciplinary authority removing them from service.

2. M.Raman, the Respondent No.1 in W.P.No.3729 of 2004, was working as watchman in the office of the Commercial Tax Officer, Washermanpet, whereas V. Sekar was working as Junior Assistant in the very same office. The substance of the charge memo against Raman is to the effect that (i) he had admitted Sekar in the office without permission from the Officers at about 3.00 a.m. on 21.8.1993, (ii) he had allowed and admitted Ramachandran, Record Clerk to stay in the office thereby he had abated the removal of valuable documents by Sekar, iii) he had not intimated about the tampering of wire mesh fixed in the chamber of Commercial Tax Officer to the authority concerned and (iv) by allowing Ramachandran to stay in the office during night time, he had enabled Ramachandran to admit Sekar in the office during night time.

2.1 Raman in his explanation, regarding charges to the effect that he had admitted Sekar on 21.8.1993, he has stated that he had locked all the doors of the office and kept the key with himself and since he was ailing, he was taking rest inside the premises and he came to know about the entry of Sekar from Ramachandran and since Sekar was also an office staff, he did not consider the entry of Sekar as serious enough.

2.2 In the departmental enquiry, no witness had been produced on behalf of the Department. However, the delinquent was examined and made a statement practically reiterating the defence taken by him. In course of such hearing, Raman had stated that Sekar, Junior Assistant, used to come to office in the night once or twice in a week and attend office work and he is employed in the office, and therefore as a night watchman he had not objected to the presence of Sekar in the office. He had further stated that Ramachandran, record clerk, was staying in the office on that day and on earlier occasions he used to stay in the open terrace near the steps and used to stay in the office frequently. He had further stated that he was not aware of tampering of steel mesh on the date of incident and he came to know only on the next day evening when he was questioned about the incident.

2.3 The enquiry officer under Charge No.1 found that by permitting two persons to stay in the office without permission, the watchman had committed delinquency. Under Charge No.2 he had found that by allowing them to stay in the office he had conspired with Sekar and Ramachandran. Under Charge No.3, it was stated that the very statement that he did not know about the removal of wire mesh until it was brought to his notice by the Assistant Commercial Tax Officer itself shows his negligence. Regarding Charge No.4, the enquiry officer opined as if the charge had been admitted, even though it was not so. On the

basis of the report of the enquiry officer, the disciplinary authority imposed punishment of removal from service by order dated 16.2.1994. Such order was challenged in O.A.No.1657 of 1994 by Raman.

3. So far as Sekar is concerned, he was served with charge memo to the effect that (i) he had come and stayed in the office at odd hours without any reason and without obtaining permission from the officer, (ii) he had removed the steel mesh fixed in the ventilator of the Commercial Tax Officer's Chamber and entered the chamber stealthily, (iii) he had tried to remove important valuable documents from the chamber of the Commercial Tax Officer, (iv) he had conspired with Ramachandran and Raman to remove valuable documents from the office.

3.1 So far as first charge is concerned, explanation of Sekar was to the effect that due to pressure of work at times he use to work in the office beyond office hours and even use to stay in the office. As he had lot of work to be done on 20.8.1993, he worked beyond office hours. Regarding Charge Nos.2 and 3 he had stated that he had not removed the steel mesh fixed in the ventilator in order to enter the room. He also denied the alleged conspiracy with Ramachandran and Raman.

3.2 During oral enquiry, no witness had been examined on the side of the Department. The delinquent stated that he had gone out with a view to return to his home, but since some bad elements took out his purse, he could not return to his home and was forced to stay in the office at night. He has further stated that he had not entered the room of the Commercial Tax Officer by removing the steel mesh.

3.3 The enquiry officer found some contradictions in the initial explanation given by the delinquent relating to charge No.1 and his subsequent statement during enquiry and therefore disbelieved the plea of the delinquent. It was further concluded by him that whatever might be the reason for entering into the office in the early hours, it was wrong to enter into the office without prior permission. It was also held by the enquiry officer that the delinquent had colluded with other two persons and had entered the office with a motive to remove the articles. On the basis of such report, subsequently, the disciplinary authority imposed punishment of removal from service by order dated 16.2.1994. Such order was challenged by Sekar in O.A.No.1658 of 1994 before the Tribunal.

4. Both the O.As were taken up for hearing together and the Tribunal by a common order dated 3.4.2002 set aside the order of removal from service of both the delinquents and directed

reinstatement in service with full backwages and all attendant benefits. The Tribunal came to the conclusion that the procedure adopted in the departmental proceedings was not fair in the sense that along with charge memo the department never disclosed the substance of the materials on the basis of which such charges are to be established nor indicated about any witness. It was also commented by the Tribunal that the department had not examined any witness, but on the other hand the enquiry officer had examined the two delinquents. It ultimately concluded that the procedural fairness was not observed. The main conclusion of the Tribunal seems to be that the finding of the enquiry officer was not based on any evidence and there has been non-application of mind on the part of the disciplinary authority to the materials on record.

4.1 So far as Raman is concerned, the Tribunal had further observed that there was nothing improper or illegal on the part of the watchman in allowing two clerks of the office to remain during night time. The Tribunal further observed that keeping in view the fact that Raman was merely a watchman, possibly it was not practicable to expect that he would forcibly turn out the clerks who use to work in the office overtime. The Tribunal took judicial notice of the fact that it is not uncommon in the Government offices that some of the officials remain during late hours and in the absence of any definite assertion to the effect that the watchman had been directed to see that no member of the staff shall remain present in the office, the watchman cannot be found fault for merely allowing Ramachandran or Sekar to stay in the office.

4.2 So far as Sekar is concerned, the Tribunal also came to the conclusion that there is no material to indicate that Sekar had entered stealthily inside the chamber of the Commercial Tax Officer by removing the wire mesh. In fact the Tribunal had observed that Sekar being a polio victim, it was not practically impossible for him to scale on the wall and to remove the wire mesh. The Tribunal had also observed that there is nothing on record to prove that there has been any removal of materials from inside the chamber of the Commercial Tax Officer. The Tribunal had also observed that since the room of the Commercial Tax Officer was accessible to Sekar and other employees, it is hard to accept the story that the employees had tried to enter the room through ventilator after removing the wire mesh. The Tribunal further observed that merely because Sekar had gone out and returned late in the night it cannot be held that there has been any misconduct.

5. On the basis of the aforesaid conclusions, the Tribunal allowed both the Original Applications and directed reinstatement with full backwages and all attendant benefits. W.P.No.3729 of

2004 is filed against the order relating to O.A.No.1657 of 1994 and W.P.No.3730 of 2004 is filed against the order relating to O.A.No.1658 of 1994.

6. Learned counsel appearing for the State has submitted that the night watchman Raman has obviously committed serious misconduct by allowing two officials to stay in the night and it must be concluded that he had done so with a view to help the other two to remove valuable articles such as files and 'C' Forms, etc. We do not think, on the basis of the materials on record, it can be said that the watchman had committed any grave misconduct merely because he has allowed Ramachandran to stay in the office. As a matter of fact, the materials on record indicate that it is usual for Ramachandran to stay in night in the office. As rightly concluded by the Tribunal, in the absence of any specific instruction directing any employee not to stay in the office during night, the watchman could not have any courage to prohibit Ramachandran, a record clerk, from staying in the office. It cannot be assumed that he is guilty of any grave misconduct or he had colluded with other two. Since the Department has failed to prove the serious allegations, merely because the watchman had allowed certain officials to stay in the office, should not be considered to be a strong enough ground to remove from service. It is of course true that the watchman had stated that as he was ailing on that day, after locking the doors he had slept. Sleeping while on duty may be a dereliction, but that was not the substance of the charge. Therefore, we do not find any inherent illegality in the order passed by the Tribunal in quashing the order of removal from service and directing reinstatement.

7. However, we are unable to accept the direction of the Tribunal regarding payment of full backwages. Even on the admitted materials it cannot be said that Raman was not at all fault. Apart from the fact that he had allowed Ramachandran to stay, the fact remains that he was also sleeping while on duty. Since he was not entirely blameless, it was not proper on the part of the Tribunal to grant backwages. Be that as it may, in course of hearing of the writ petition, learned counsel appearing for Raman on the basis of the instructions from Raman, who is present in Court, has submitted that backwages from the date of removal till the order of the Tribunal may not be paid.

8. In the facts and circumstances of the case, we find this is a fair concession made by the learned counsel for Raman. Therefore, accepting such fair submission, we are inclined to modify the order of the Tribunal to the extent that even though the order of removal is to be quashed, the direction regarding payment of backwages from the date of the order of removal till

the order passed by the Tribunal shall not be operative. However, the aforesaid period shall be notionally treated as on duty for all purposes, including calculation of increments, seniority, continuity in service, promotion, pension, etc., but no backwages would be payable from the date of removal till the date of the order passed by the Tribunal, i.e., 3.4.2002.

9. So far as Sekar, Respondent No.1 in W.P.No.3730 of 2004, is concerned, learned counsel appearing for the State has submitted that even assuming that there is no evidence to hold that Sekar had removed the wire mesh and entered into the room through ventilator, the fact remains that he came to the office at late hours i.e., at 3.00 a.m. In this connection we may observe that even though the explanation of Sekar may not appear to be very convincing, there is nothing to prove that in fact he had removed the wire mesh and entered through the ventilator. Similarly there is nothing to prove that valuable articles kept in the room of the Commercial Tax Officer had been surreptitiously removed by anybody far less by Sekar. Obviously the gravamen of the charge was relating to alleged entry through ventilator and alleged removal or alleged attempt of removal of articles. Since this aspect has not been proved at all, merely because Sekar came to the office at odd hours, it cannot be assumed that Sekar did so with a view to remove the valuable articles. Keeping in view such a conclusion, we are inclined to accept the observation of the Tribunal regarding quashing of the order of removal.

10. However, as in the other case, in this case also, we are not convinced with the direction regarding payment of full backwages by the Tribunal. Even though serious allegations might not have been proved by the departmental authorities, the fact remains that the conduct of Sekar in coming to the office at odd hours has justifiably raised some doubts. In course of hearing of the writ petition, learned counsel appearing for Sekar, Respondent No.1 in W.P.No.3730 of 2004, on the basis of the instructions from Sekar, who is present in court, has fairly submitted that backwages from the date of removal till the order of the Tribunal may not be paid.

11. Keeping in view the facts and circumstances of the case and the fair concession made by the learned counsel appearing for Sekar, we are inclined to modify the order of the Tribunal to the extent that even though the order of removal is set aside and the employee shall be deemed to be reinstated in service from the date of removal, no backwages would be payable for the period from the date of removal till the date of the order passed by the Tribunal, but the aforesaid period shall be notionally calculated for all other benefits such as continuity in service, increments,

promotion, pension, etc. However, no amount would be payable for the period till 3.4.2002, when the order was passed by the Tribunal.

12. The question of payment of wages to both the respondents for the subsequent period, however, stands on a different footing. The order of the Tribunal was passed on 3.4.2002 and it was challenged after a lapse of about 22 months and that too only after a contempt application was filed. The Government had occasion to comply with the order and it could have done so even without prejudice to the contentions to be raised in the writ petitions. Moreover, on the basis of the fair submission made by the learned counsel appearing for both the respondents, no backwages are being paid for a quite long period.

13. In such view of the matter, we are inclined to direct that the Respondent No.1 in both the writ petitions, namely, Raman and Sekar, shall be entitled to salary with effect from the date of order of the Tribunal by notionally calculating the increments. The amount payable from 3.4.2002 till the end of February, 2006 shall be calculated and paid within a period of three months from the date of receipt of copy of the present order. The salary for the month of March, 2006 for both the employees shall be paid as per the normal practice in such matters and thereafter the monthly salary shall be paid regularly. The direction regarding reinstatement should be carried out within a period of six weeks from the date of receipt of copy of the order.

14. In the result, both the writ petitions are dismissed, subject to the aforesaid modification. There would be no order as to costs. Two memos filed by the Advocate, signed by two respondents shall be kept as part of the records.

dpk

Sd/

Asst.Registrar

/true copy/

Sub Asst.Registrar

To
The Registrar,
Tamil Nadu Administrative Tribunal,
Chennai 104.

+ two copies to Mr.C.Kanagaraj, Advocate Sr.No.1841 & 1842.
+ one cc to Government Pleader Sr.No.1889.

MAB (CO)/RSM8.2.2006

WP.NOs.3729 and 3730 of 2004